

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN BROSNAN,

Plaintiff,

v.

ANTONIO CASTELLANOS, et al.,

Defendant.

No. C 09-2174 PJH

**ORDER GRANTING
MOTION TO DISMISS**

The motion of defendant Antonio Castellanos ("defendant") to dismiss and to strike punitive damages claim came on for hearing on November 25, 2009. Plaintiff John Brosnan ("plaintiff") appeared pro se, and defendant appeared through his counsel, Reid M. Miller. For the reasons stated at the hearing and summarized as follows, the court GRANTS defendant's motion to dismiss and declines to hear the motion to strike.

Plaintiff has not established that he is a citizen (rather than simply a resident as alleged in his complaint) of Nevada, and thus that there is complete diversity. For the purpose of determining diversity jurisdiction, a natural person is a citizen of a state if that person is both a citizen of the United States and domiciled within that state. Kantor v. Wellesley Galleries, Ltd., 704 F.2d 1088, 1090 (9th Cir. 1983). "A person's domicile is her permanent home, where she resides with the intention to remain or to which she intends to return." Kanter v. Warner-Lambert Co., 265 F.3d 853, 857 (9th Cir. 2001).

Residency, however, may or may not be the same as domicile for purposes of diversity jurisdiction. Kanter, 265 F.3d at 857. Factors a court may consider as evidence of a person's intent to remain in a given state include voting registration, place of employment or business, residence, location of real property, location of family, driver's license and

1 automobile registration. Lew v. Moss, 797 F.2d 747, 750 (9th Cir. 1986).

2 In this case, plaintiff has failed to demonstrate his intent to remain in Nevada, and
3 thus that he is domiciled in Nevada. As explained at the hearing, on balance, the court
4 finds that the above factors weigh in favor of defendant, and that if plaintiff is a citizen of
5 any state, it is California. Accordingly, the court hereby GRANTS defendant's motion to
6 dismiss for lack of subject matter jurisdiction.

7 **IT IS SO ORDERED.**

8 Dated: December 3, 2009



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PHYLLIS J. HAMILTON
United States District Judge